United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-2095

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

To be argued by
Stephen M. Latimer

ASSATA SHAKUR a/k/a JoANNE CHESIMARD,

Appellant,

-against-

BENJAMIN MALCOLM, individually, and as Commissioner of Correction of the City of New York; JOSEPH D'ELIA, individually, and as Director of Operations, Department of Correction, City of New York; ESSIE MURPH, Superintendent, New York City Correctional Institution for Women,

Appellees.

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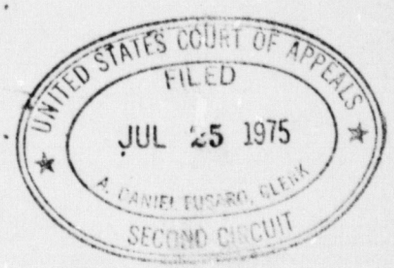

APPELLANT'S BRIEF

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July 28, 1975

Clerk
United States Court of Appeals
United States Courthouse
Foley Square
New York, N. Y.

Re: SHAKUR V. MALCOLM
No. 75-2095

Dear Sir:

Please make the following errata changes to Appellant's brief.

Page	Correction
Cover	"Bornx" to read "Bronx"
3 Footnote 1	Fourth Line of second paragraph, Matter in parentheses should read (2A - 12A)
12	First full paragraph, fourth line, change "nor have" to read "or that"
15	First full paragraph, fifth line, Fifth line, insert "(" before work "See"
16	Eighth line, change "inapplicable" to read "irrelevant."

Very truly yours,

Stephen M. Latimer
Director of Law Reform

SML/rb
cc: Corporation Counsel

TABLE OF CONTENTS

TABLE OF AUTHORITIES

* * *

UNITED STATES COURT OF APPEALS
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ASSATA SHAKUR a/k/a JoANNE CHESIMARD, :

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-against- No. 75-2095

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Appellees. :

APPELLANT'S BRIEF

PRELIMINARY STATEMENT

Bronx Legal Services represents appellant in a civil rights action now pending in the U.S. District Court for the Southern District of New York challenging the conditions of her confinement at the New York City Correctional Institution for Women ("Rikers Island"). This appeal is from an oral order of the Honorable Thomas P. Griesa on June 27, 1975, denying appellant's motion to permit para-professionals employed by Bronx Legal Services to conduct attorney-type interviews with her. Appellant contends that this prohibition against para-professionals interviewing her violates

the mandate of Procunier v. Martinez, 416 U.S. 396, 94 S. Ct. 1800, 1814 (1974).

ISSUES PRESENTED

1. Does the refusal of the Department of Correction to permit para-professionals employed by appellant's attorneys in a civil rights action against the Department to conduct attorney-type interviews with her, violate appellant's Sixth and Fourteenth Amendments right to counsel and to access to the courts?

2. Did the District Court err when it considered in camera certain information essential to a decision of the motion, and for which no claim of privilege was properly invoked?

STATEMENT OF THE CASE

A. Nature of the Case.

On January 29, 1975 appellant, who is incarcerated on Rikers Island, filed an action pursuant to 42 U.S.C., Section 1983 alleging that the conditions of her confinement violate constitutional standards. Shortly thereafter, she moved the court for permission to have para-professionals employed by, and volunteers who work with, Bronx Legal Services (18A) conduct attorney type interviews with her on Rikers Island. On the basis that discussions were in

progress among the attorneys for the parties and that a satisfactory arrangement could be worked out, the motion was denied. Subsequent negotations were fruitless and the Department of Correction refused all requests to have any one other than an attorney interview appellant (32A, 43A). She then moved the court for permission to have Afeni Shakur, Jeannine Smith, and Anthony La Borde, three para-professionals employed by, and on the payroll of, Bronx Legal Services interview her. (29A). After argument on June 27, 1975, and after the court reviewed unknown and unspecified information in camera, the motion was denied (19-25). A timely notice of appeal was filed.[1] By order of this court dated July 3, 1975, the matter was set down for an expedited briefing schedule and argument.

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1. The order is appealable as of right either as the denial of a preliminary injunction under 28 U.S.C., §1292(a) or under the doctrine of Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949). The order appealed from "is a final disposition of a claimed right which is not an ingredient of the cause of action and does not require consideration with it."

   Although the Department of Correction actions and the District Courts order constitute serious deprivations of appellant's Sixth Amendment rights, the issues have not been raised in the complaint (32A-12A), and are thus "separable from and collateral to" the rights asserted therein.

   Moreover, the issues raised on this appeal, access to a prisoner by para-professionals employed by the attorney of record during the pendency of a civil rights action, will become academic with the termination of the litigation. Thus, if the appeal on this issue must wait until a final determination of the action, "[w]hen that time comes, it will be too late to effectively review the present order and [appellant's rights] will have been lost, probably irreparably." (All quoted

B. Statement of Facts.

Rikers Island is located in the East River, roughly between La Guardia Airport and the Bronx. The trip by public transportation from the attorneys office in the Bronx to Rikers Island, the visit with appellant, and the return to the Bronx normally requires at least half of a working day. Under Department of Correction procedures, the attorney must first secure a pass from the Department of Correction, which in this case consumes yet another half working day (15A).

The District Court denied appellant's motion on the ground that:

> The specific needs for such extensive interviewing have not been spelled out. There is no specific indication of exactly why it is necessary in this civil action to have a total of four people, namely the attorney and the three other persons, engage in such interviews with the plaintiff. (20).

However, the record clearly shows that counsels practice is to consult with his client at each stage of the ligitation to plan strategy, for discovery, to evaluate the information disclosed, and to prepare for trial. (30A). Thus, numerous visits to Rikers Island

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(Footnote continued).

matter in this footnote is from Cohen, supra, 337 US at 546-47). See also, Stack v. Boyle, 342 U.S. 1 (1951) (order fixing bail is appealable); Roberts v. U.S. District Court, 339 US 844 (1950) (order denying leave to proceed in forma pauperis is appealable); Farber v. Riker Maxon Corp., 442 F.2d 457 (2nd Cir., 1971) (order restraining counsel from violating terms of order appointing lead counsel in consolidated actions is appealable).

are required. The difficulties in visiting Rikers Island are eased substantially when any one of three para professionals employed by plaintiff's attorney can assume part of that burden. That would enable the attorney to make the most efficient use of his time and would expedite prosecution of the action.

The District Court found that the Department of Correction policy permits open visits between "bona fide attorneys and bona fide staff members of attorneys" (21) between 9:00 a.m. and 5:00 p.m. on weekdays and 9:00 a.m. and 12:30 p.m. on Saturdays. The visits are conducted in non-partitioned booths to permit free contact by the attorney and client. ("Attorney interviews") (21). Requests for legal visits by para-professionals are passed upon on a case by case basis. This is done to prevent abuse of the attorney visits by non-lawyers. (22).

Ms. Shakur, Ms. Smith and Mr. La Borde are employed by Bronx Legal Services as para-professionals under the job title "Legal Services Assistants." They have been so employed for three years, two years and one and a half years respectively. (34A, 36A, 38A). They have assisted Stephen M. Latimer, the attorney in charge of the litigation for Bronx Legal Services, on various prisoners' rights matters for more than one year (31A). As part of their duties they have conducted attorney interviews with clients and witnesses in state prisons on a regular basis, as well as with other women prisoners on Rikers Island (31A). Indeed, the day before argument

of the motion, Ms. Smith and Mr. La Borde conducted an attorney interview with another client of Bronx Legal Services without incident (5).

During the course of negotations and the following litigation permission was sought for five para-professionals to visit appellant. By letter dated April 1, 1975, counsel requested permission for Lumumba Shakur and Wakil Shakur a/k/a Tyrone Turner, two volunteers. (40A). That request was denied orally. By letter dated April 10, 1975, counsel requested permission for Ms. Shakur and Mr. La Borde. That request was denied on the ground that Department of Correction policy requires application to the court (43A). Subsequently, based on that policy, appellant brought the instant motion seeking permission for Ms. Shakur, Mr. La Borde and Ms. Smith. (31A). Thus, while the Department of Correction may not have a blanket policy forbidding para-professionals to conduct attorney interviews with other prisoners, (46A), the record shows a blanket prohibition against such interviews with appellant.

At the outset of the proceedings on June 27, 1975 before it heard any argument, the court had already decided to hear the evidence in camera. (2). That decision could only have been based on the statement in the affidavit of Assistant Corporation Counsel Donald Tobias, who is neither an official of, nor employed by the Department of Correction, that the Department's determination was based on "confidential data collected from various law enforcement agencies." (46A), which it refused to reveal to appellant's attorney.

After hearing information in camera and ordering the record sealed, the court denied appellant's motion on the ground that appellant is an escape risk who must be given special treatment (23), and that two of the persons involved have criminal records (22). There is no evidence on this record to connect either Ms. Smith, Ms. Shakur or Mr. La Borde to appellant or to any current illegal activity. The court also declined to disclose the information presented in chambers on the ground that:

> It relates to ongoing criminal problems and investigations and it would be most inappropriate, to say the least, to authorize its disclosure. I am not asserting that all of the information is of a private nature. Some of the information conveyed to me had to do with past criminal records of certain individuals, arrests, and so forth, which are matters of public record. But the really crucial information was a matter which must be held, I believe, in confidence. (23).

Among the materials taken into chambers was a copy of Kempton, The Briar Patch, an account of a criminal trial in which Afeni Shakur was a defendant. (25). That book and its contents are surely in the public domain. Other information was admittedly public in nature and should have been revealed in order to give appellant an opportunity to rebut any adverse inferences drawn from it.

As set forth in Point II, infra, even the so called private information should have been revealed to appellant's attorney or not considered by the court because any other action is a violation of due process of law. Thus, on the record in open court appellant has a Sixth Amendment right to have Bronx Legal Services staff members conduct attorney interviews with her.

POINT I

THE REFUSAL OF THE DEPARTMENT OF CORRECTION TO PERMIT PARA-PROFESSIONALS TO CONDUCT ATTORNEY INTERVIEWS WITH APPELLANT VIOLATES HER SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO ACCESS TO THE COURTS.

A fundamental right of prisoners is the right of access to the courts to obtain redress of violations of constitutional rights. Procunier v. Martinez, supra, Johnson v. Avery, 393 U.S. 483 (1969); Ex Parte Hull, 312 U.S. 546 (1941). The right of access "encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all...grievances alleged by him," Gilmore v. Lynch, 319 F. Supp. 105, 110 (N.D., Cal. 1971), aff'd. sub. nom. Younger v. Gilmore, 404 U.S. 15 (1971).

An essential corollary is the right to obtain legal assistance to facilitate that access.

> This means that inmates must have a reasonable opportunity to seek and receive the assistance of attorneys. Regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid. Ex parte Hull, [supra].

Procunier v. Martinez, supra, 94 S. Ct. at 1814 (1974), Sousa v. Travisono, 498 F.2d 1120, 1123 n. 6 (1st Cir., 1974). In Procunier the right of access to attorneys by incarcerated clients was defined to include access to law students and para-professionals employed by attorneys. The reason for this inclusion was recognition that the isolation of most prisons, (including Rikers Island) and the practical difficulties encountered by attorneys who represent incarcerated

clients impose a substantial burden on a prisoner's access to the courts.

Those factors are crucial here. In five months, because of the substantial difficulties and burdens on the attorney's time, he has been virtually unable to visit appellant to discuss strategy and determine her present situation. As a result, discovery has not even begun. (2A). Many matters, including discussions of current conditions, review of documents and signing affidavits, among others, can be done by any of the para-professionals concerned, all of whom are competent and experienced. (31A). Thus, to permit these interviews will alleviate the substantial burdens on her attorney and the unconcionable burden on appellant's right of access to the courts.

The right of access to attorneys and para-professionals:

> "Requires the opportunity for confidential communication between attorney and client on pending litigation and related legal issues. (Citing cases) Goodwin v. Oswald, 462 F2d 1237, 1241 (2nd Cir., 1972).

Although Goodwin concerned attorney-client mail, the same principles apply to consultations. Sousa v. Travisono, 368 F. Supp. 959 (D.R.I. 1973). Confidentiality is essential when the subject matter of the interview are the tactics and strategy of civil rights litigation against the prison officials.

Admittedly, the prison may make reasonable regulations governing the visits by attorneys and para-professionals, Sousa v. Travisono, supra. However, those regulations must not be unduly

restrictive, and any restriction must be justified by a reasonable fear that "a prisoner has clearly abused his rights of access" (emphasis supplied), Sostre v. McGinnis, 442 F.2d 178,200(2Cir 1971). This court there contemplated restrictions based on past abuse justifying present action, not as here, a prior restraint. It is not enough to say merely that there has been an abuse of the right of access. The nature of the abuse must rise to the level of a colorable threat to institutional security, Procunier, supra, 94 S. Ct. at 1815, such as transmittal of contraband or laying plans for an unlawful scheme Sostre, supra, 442 F. 2d at 200. The record in open court is devoid of any such showing.

Further, when restrictions are imposed, the prison authorities must provide reasonable alternatives to assure that the right of access is unobstructed. Johnson v. Avery, supra, Gilmore v. Lynch, supra. The Department of Correction suggests that the para-professionals can conduct the interviews during a thirty minute visit in a partitioned booth in the evenings. (21A, 21). However, the proposed visits are professional, not personal, and this alternative is unreasonable.

During the course of consultations confidential legal documents may be discussed and examined by the para-professional and the client, and appellant will, on occasion have to sign affidavits and other documents.[1]

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1. The Department's "requirement" that prior to the interivew appellant's attorneys "state what information they desire to obtain" (48A) is itself a denial of access. It is ludicrous to suggest that as a condition of exercising a constitutional right the attorney-client privilege be violated, particularly where the Department of Correction is itself an adverse party.

To restrict Bronx Legal Services' staff to these "closed visits" substantially inhibits their ability to perform these functions. Very often consultations, particularly discussions of tactics and evaluation of information cannot be completed in thirty minutes. The glass partition severely hinders the ability for meaningful consultation. It is impossible to exchange doucments relevant to the case, or even to review and discuss those documents. Moreover, the partition and the necessity to use phones for communication inhibits the colloquy so essential to effective consultation. Thus the restrictions imposed by the Department of Correction unjustifiably obstruct appellant's access to counsel and are invalid.[2] Procunier v. Martinez, supra; Goodwin v. Oswald, supra; Sostre v. McGinnis, supra at 200.

Moreover, the District Court's justification for denying access to the three para-professionals is unfounded. The Department

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2. The restriction also discriminates against Bronx Legal Services as opposed to other legal organizations. For instance, in Wallace v. Kern, 72 Civ. 898 (E.D.N.Y. August 24, 1972), Judge Weinstein signed an order permitting para-professionals utilized by plaintiff's attorneys to interview prisoners in the Brooklyn House of Detention, and Judge Lasker signed a similar order in Giampetruzzi v. Malcolm, 72 Civ. 4735 (S.D.N.Y. October 30, 1974), for the Legal Aid Society para-professionals to conduct interviews on Rikers Island.

of Correction claims that appellant is an escape risk, a claim whose only conceivable basis is an alleged but unproven association with persons who have been accused of escape attempts from various city jails.[3] This process of guilt by association was disparaged in Stack v. Boyle, 342 U.S. 1 (1951). The Supreme Court there condemned the use of an unsubstantiated assumption of conspiracy to circumvent the requirement that bail for each defendant be considered on its own merits. Id. at 4.

So here an unarticulated assumption of conspiracy cannot justify restrictions on appellant's right of access to her attorneys or to the courts. Yet the Department of Correction offers no proof that appellant has ever attempted to escape, for she hasn't, nor have Ms. Shakur, Ms. Smith or Mr. La Borde have acted in concert with appellant in furtherance of any unlawful scheme, for indeed they have not. To condone the Department's conduct "would inject into our own system of government the very principles of totalitarianism," which the Constitution is designed to protect against. Id.

That Mr. La Borde or Ms. Smith has a criminal record is irrelevant to their suitability to conduct attorney interviews with appellant. The Department of Correction permits access similar to

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3. The court may take judicial notice that newspapers have characterized appellant as a member of the so-called Black Liberation Army, and that some persons who have tried to escape from other city jails have also been charged with membership in that organization. New York Indians v. U.S., 170 U.S. 1, 32 (1898); U.S. V. Taylor, 488 F. 2d 348 (5th Cir., 1971); Mills v. Denver Tramway Corp.,155 F. 2d 808 (10th Cir., 1946).

that sought here for convicted felons employed as Correction Aides (see newspaper clipping attached as Annex A) and for investigators with criminal records who are employed by the Legal Aid Society. (32A, 12). Moreover, the Department does not dispute that the three para-professionals regularly interview clients in State institutions, and have interviewed persons on Rikers Island without incident or complaint. Any claim that they threaten institutional security is clearly frivolous. cf. Schware v. Board of Bar Examiners, 353 U.S. 232, 241 (1957).

Finally, the District Court's holding that the present case does not come within Procunier because the ban here is not absolute, is clearly erroneous. There, certain categories of law students were permitted access, and only those working for attorneys were barred from the prison. 94 S. Ct. at 1815. Thus, the concept of an absolute ban depends on the context of the case. Here, six names were submitted to the Department of Correction requesting permission to conduct attorney visits with appellant and all six were rejected. The vigor of the Department of Correction's objection to these requests gives appellant's attorney no reason to believe that any request by Bronx Legal Services will be honored. It is therefore apparent that despite appellees protestations that each request is considered on an individual basis, the prohibition of para-professionals conducting attorney visits with appellant is absolute as the term is used in Procunier and by the First Circuit in Sousa v. Travisono, supra.

POINT II

CONSIDERATION OF UNSPECIFIED INFORMATION BY THE DISTRICT COURT IN CAMERA VIOLATES APPELLANT'S AND ATTORNEYS RIGHT TO DUE PROCESS OF LAW

It is a cardinal principle that government may not prevent a person from practicing any occupation in a manner which is arbitrary, capricious or discriminatory without running afoul of the due process clause. Wilner v. Committee on Character and Fitness, 373 U.S. 96 (1963), Schware v. Board of Bar Examiners, supra, Wieman v. Updegraf, 344 U.S. 183 (1952). Before the right to practice an occupation may be abridged, the Fourteenth Amendment requires at a minimum a hearing at which adverse evidence may be challenged, Goldberg v. Kelly, 397 U.S. 254 (1970), Wilner v. Committee, supra, Goldsmith v. U.S. Board of Tax Appeals, 270 U.S. 117, 123 (1952), and a statement of reasons for the decision sufficient to enable a reviewing court to make an intelligent determination. Wolff v. McDonnell, 418 U.S. 539 (1974), U.S. ex. rel. Johnson v. Board of Parole, 500 F. 2d 925 (2nd Cir., 1974).

The Department of Correction's actions, and the decision of the court below are in flagrant violation of these principles. The three para-professionals concerned are required in the regular performance of their duties to interview incarcerated clients (31A),

as an extension of the Bronx Legal Services attorneys who represent them. The refusal to permit them to perform this important function is not based on any evidence presented in open court, and the only reason given is the vague conclusory allegation that these three would in some unarticulated way jeopardize the security of the prison. This conclusion, founded on an unsubstantiated assumption of conspiracy (see supra p. 12), cannot be the basis of an abridgment of fundamental constitutional rights. Stack v. Boyle, supra, cf. Schware, supra, 353 U.S. at 250 (Frankfurter, J., concurring). Furthermore, for the reasons enumerated in Procunier, supra, 94 S. Ct. at 1814, the use of para-professionals to interivew prisoner clients is essential to alleviate a substantial burden on attorneys who represent them. The decision of the court below thus substantially interferes with appellant's attorneys' ability to practice his profession.

It is not only the attorneys rights that are interfered with. The Department of Correction has deprived appellant of a substantial constitutional right, the right of access to the courts. At the very least, she is entitled to know the specific reasons for the deprivation, and to know and rebut any information relied on. See cases cited supra, page 14).

The "crucial information" (23) relied on by the District Court, and the Department of Correction was considered in camera and not disclosed to appellant's attorney, who is most directly concerned, on the ground that the information is privileged. The privilege asserted

is either a privilege against disclosure of investigatory files to the extent that they reflect advisory rather than factual material, Carl Zeiss Stiftung v. V.E.B., Carl Zeiss, Jena, 40 F.R.D. 318 (D.D.C., 1966), aff'd. 384 F.2d 979 (D.D.C., Cir., 1967) cert. den. 389 U.S. 952 (1967) or to protect police files in connection with an ongoing criminal investigation. Brown v. Thompson, 430 F.2d 1214 (5th Cir., 1970). These privileges protect material in the discovery stages of the case and are inapplicable when the government seeks to introduce them in evidence at trial.[4] U.S. v. Coplon, 185 F.2d 629, 639 (2nd Cir., 1950). The Department may not "fill a gap in [its] own evidence by recourse to what [it] suppresses". Id. at 638. Alderman v. U.S., 394 U.S. 165 (1969).

The District Court, relied almost exclusively on evidence received in camera to support its determination. In so doing it implicitly acknowledged the insufficiency of the record in open court

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4. Even if these privileges were relevant, they are inapplicable here. The Department of Correction is not a law enforcement agency or prosecutorial agency. New York City Charter. Ch. 25, Administrative Code of the City of New York, Ch. 25. Thus, it cannot invoke the "ongoing criminal investigation" privilege, that right being reserved to the police or prosecutors, cf. Capitol Vending Co., Inc., v. Baker, 35 F.R.D. 510 (D.D.C., 1964).

The "investigatory file" privilege is qualified rather than absolute. Kinoy v. Mitchell, 70 Civ. 5698 (S.D.N.Y., June 3, 1975), (Ward J.) sl. op. 13. Thus even conclusions and recommendations of government agencies must be disclosed to a litigant. Pilar v. Hess Petrol, 55 F.R.D. 159, 164 (D.Mo., 1972). Where the F.B.I. is

as a basis for the denial of the constitutional rights of appellant, her attorneys and the three para-professionals. The in camera proceeding was itself a violation of due process, for as Judge Hand said in Coplon, supra, 185 F. 2d at 638:

> We can see no significant distinction between introducing evidence against an accused which he is not allowed to see, and denying him the right to put in evidence on his own behalf.

In our system of justice consideration of individual rights is paramount. There is no room for "ex - parte determinations on the merits of cases in civil litigation." Kinoy v. Mitchell, supra, sl. op. 22. Therefore, if the Court below felt that disclosure was unwarranted, the proper course would have been either to reject the Department of Correction's claims, or to determine the merits of the proceeding on the basis of the record in open court. Alderman v. U.S., supra, 394 U.S. at 184, Kinoy v. Mitchell, supra.

(Footnote continued)

involved as in Kenyatta v. Kelly, 375 F. Supp. 1175 (E.D., Pa. 1974) and Jabara v. Kelly, 62 FRD 424 (E.D., Mich. 1974) or local police agencies as in Boyd v. Gullett, 64 FRD 169, 178 (D. Mo. 1974), Gaison v. Scott, 59 FRD 347 (D. Hawaii, 1973), Wood v. Brier, 54 FRD 7 (E.D., Wis. 1972) and Frankenhauser v. Rizzo, 59 FRD 339 (E.D., Pa. 1973), disclosure is permitted of factual reports and summaries, observations made by officers in the performance of their duties, including dates and times, and witness statements. Consistent with this policy complete prison files, and relevant portions of parole board files must be produced. Bogard v. Cook, 60 F.R.D. 508 (N.D., Miss., 1973). (con't.)

CONCLUSION

Access to the courts and to attorneys is essential for prisoners to vindicate their civil and constitutional rights. The flat ban on Bronx Legal Services para-professionals conducting attorney interviews with appellant places an unjustified burden on that right. The practical effect has been to obstruct the progress of the litigation, and to severely hinder Bronx Legal Services' ability to effectively represent her.

Few weapons are more useful to the end of preserving individual rights, including the right of access to the court, than the power to compel government to disclose the evidence upon which it relies in seeking to abridge those rights. That power is:

> precious because it prevents that purpose and its pursuit from passing unchallenged by the accused, and unpurged by the alembic of public scrutiny and public criticism. A

(Footnote continued)

Additionally, the claimed privilege was improperly invoked. There was no affidavit by the Commissioner of Correction, Reynolds v. U.S., 345 U.S. 1 (1953), nor a specific designation of the materials within its scope accompanied by "precise and certain reasons for preserving their confidentiality." Black v. Sheraton Corp. of America, 371 F. Supp. 97, 101 (D.C.D.C., 1974), Wood v. Brier, supra. Nor did the Department of Correction demonstrate the need for privilege by any means short of in camera inspection. Environmental Protection Agency v. Mink, 410 U.S. 73, 93 (1973).

> society which has come to wince at such exposure of the methods by which it seeks to impose its will upon its members, has already lost the feel of freedom and is on the path towards absolutism.

Coplon, supra, 185 F 2d at 638. For the foregoing reasons the order appealed from should be reversed.[5]

Respectfully submitted,

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STEPEHN M. LATIMER, ESQ.,
Attorney for Appellant

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5. Counsel wishes to express his appreciation to Afeni Shakur, Jeannine Smith, Anthony LaBorde and Merle Ratner for their assistance in the preparation of this appeal.

ANNEX-A

NEW YORK TIMES, SUNDAY, APRIL 25,1975

Gross's Reappearance

Ted Gross was once a promising New York bureaucrat. At 30 he was the city's Youth Services Commissioner, and his reputation for street wisdom gained him entrance to the Lindsay administration's inner circle. Then he was indicted on eight counts of accepting bribes; he pleaded guilty to two counts and was sentenced to three years in prison. He was released on parole last November. Now Mr. Gross has reappeared, as a $14,480-a-year aide in the state's Department of Corrections. "I've made a mistake, and I admit I was wrong," he said, "but I've paid my obligation."

CERTIFICATE OF SERVICE

This is to certify that on July 25, 1975 the within Appendix and brief was seved by mail on the attorneys for appellees at their offices c/o Corporation Counsel, Municipal Building, New York, N.Yq

Attorney for appellant